

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

PAVEL ZISSU and AISE ZISSU,)	
)	
Plaintiffs,)	
)	
v.)	Case No. 15-cv-02394
)	
IH2 PROPERTY ILLINOIS, L.P.,)	Hon. John Z. Lee
)	
Defendant.)	

**IH2 PROPERTY ILLINOIS, L.P.'S RULE 12(B)(6) MOTION
TO DISMISS THE COMPLAINT**

Defendant, IH2 Property Illinois, LP ("IH2 Property), by and through its attorneys, Miles V. Cohen and Sonia S. Kinra of Scott & Kraus, LLC, hereby moves to dismiss the Complaint, with prejudice, in accordance with Fed. R. Civ. P. 12(b)(6). In support of this Motion, IH2 Property submits the accompanying Memorandum of Law and states as follows:

1. Taking the allegations in the Complaint as true, the Complaint fails to state a cause of action against IH2 Property. In the Complaint, Plaintiffs allege that On October 16, 2014, Judge Alfredo Maldonado of the Circuit Court of Cook County entered an Order of Possession in favor of IH2 Property and against Plaintiffs. Plaintiffs failed to leave the subject premises and the Order for Possession was placed with the Sheriff of Cook County for enforcement. On January 26, 2015, the Sheriff of Cook County turned over possession of only the subject premises to IH2 Property. Plaintiffs then allege that IH2 Property removed the personal property of the Plaintiffs from the subject premises and certain items were damaged.

2. Plaintiffs now seek to hold IH2 Property liable for damages to Plaintiffs and their possessions under various theories, including negligence, trespass to chattel, conversion, bailment and intentional infliction of emotional distress.

3. Plaintiffs' claims, however, all fail as a matter of law. Plaintiffs have alleged

insufficient specific facts to make their claims plausible against IH2 Property under Fed. R. Civ. P. 8(a), *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007) and *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Under these authorities, Plaintiffs must do more than plead facts that are “merely consistent with” a defendant’s liability. *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 557). *Iqbal* and *Twombly* require dismissal where the “specific facts” in the pleading (after the Court strips away legal conclusions and formulaic recitation of the elements of the claim are “just as consistent with lawful conduct as it is with wrongdoing.” See *Brooks v. Ross*, 578 F.3d 574, 581-82 (7th Cir. 2009).

4. The claim for Negligence in Count I fails to plead sufficient facts to make plausible the claim that IH2 Property owed any duty to Plaintiffs, any alleged duty was breached or that IH2 proximately caused any alleged injury to Plaintiffs.

5. The claim for Bailment in Count II is deficient as a matter of law as Plaintiffs fail to plead facts establishing that IH2 Property dispossessed or used Plaintiffs’ property as required.

6. Plaintiffs fail to allege sufficient facts to plausibly state a claim for conversion as they failed to plead a right in the property, that they had an absolute and unconditional right in the property and that a demand was made for possession.

7. Plaintiffs bailment claim in Count IV also fails as their own allegations contradict the elements required to properly plead a cause of action for bailment.

8. Finally, Plaintiffs’ cause of action for intentional infliction of emotional distress is not only pled using formulaic recitations of the elements of the cause of action but is implausible on its face.

9. The Complaint should be dismissed with prejudice because amendment would be futile. See *Hongbo Han v. United Cont’l Holdings, Inc.*, 762 F.3d 598, 603 (7th Cir. 2014).

WHEREFORE, for the foregoing reasons, Defendant IH2 Property Illinois, LP respectfully requests that this Honorable Court grant this Motion to Dismiss under Rule 12(b)(6), dismiss the Complaint with prejudice and for such other and further relief as this Honorable Court deems proper.

Dated: May 22, 2015

Respectfully submitted,

By: /s/Sonia S. Kinra
One of the Attorneys for Defendant IH2
Property Illinois, LP

Miles V. Cohen (6242698)
Sonia S. Kinra (6271271)
Scott & Kraus, LLC
150 S. Wacker Drive, Suite 2900
Chicago, Illinois 60606
(312) 327-1050
mcohen@skcounsel.com
skinra@skcounsel.com